

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	CRIMINAL NO. 04-10215-GAO
)	
DWAYNE BRANCO,)	
Defendant.)	

**MOTION AND BRIEF OF THE UNITED STATES
FOR ISSUANCE OF A PRELIMINARY ORDER OF FORFEITURE**

The United States, by and through its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, hereby moves that this Court issue a Preliminary Order of Forfeiture in the above-captioned case pursuant to 21 U.S.C. § 853, as incorporated by 28 U.S.C. § 2461(c). A proposed Preliminary Order is submitted herewith. In support thereof, the United States sets forth the following:

1. On or about July 21, 2004, a federal grand jury sitting in the District of Massachusetts returned a two count Indictment charging defendant Dwayne Branco, (the "Defendant"), with the following violations: Felon in Possession, in violation of 18 U.S.C. § 922(g)(1)(Count One), and Possession of Crack Cocaine with Intent to Distribute, in violation of 21 U.S.C. § 841(a)(1)(Count Two).

2. The Indictment sought the forfeiture, as a result of committing the offense alleged in Count One of the Indictment, of any firearm involved in or used in the offense, pursuant to 18

U.S.C. § 924(d) and 28 U.S.C. § 2461, including, but not limited to, the following: one Colt Government Model First Edition .380 caliber pistol, serial number 380FES0013 (the "Property").

3. On or about January 6, 2005, a Change of Plea Hearing was held whereby the Defendant entered a plea of guilty to Counts One and Two of the Indictment.

4. By virtue of the Defendant's guilty plea and pursuant to 21 U.S.C. § 853(a), as incorporated by 28 U.S.C. § 2461(c) and Rule 32.2 of the Federal Rules of Criminal Procedure, the United States is now entitled to a Preliminary Order of Forfeiture against the Property. See Rule 32.2(b)(2); 21 U.S.C. § 853(a).

5. Upon the issuance of a Preliminary Order of Forfeiture, the United States will provide written notice to all third parties asserting a legal interest in the Property and will publish notice in a newspaper of general circulation of the Court's Order and of the United States' intent to dispose of the Property in such manner as the Attorney General may direct, pursuant to 21 U.S.C. § 853(n), as incorporated by 28 U.S.C. § 2461(c).

WHEREFORE, the United States respectfully moves that this Court enter a Preliminary Order of Forfeiture against the Property in the form submitted herewith.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney,

/s/Kristina E. Barclay
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Date: May 31, 2005

CERTIFICATE OF SERVICE

I certify that I have served a true copy of the foregoing upon Douglas J. Darnbrough, Esquire, 56 North Main Street, Suite 203, Fall River, MA 02720, as counsel for Defendant Dwayne Branco, by first class mail.

/s/ Kristina E. Barclay
KRISTINA E. BARCLAY
Assistant U.S. Attorney

Date: May 31, 2005